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July 12, 2021

VIA ECF and First Class Mail

Hon. James B. Clark III, U.S. Magistrate Judge
United State District Court, District of New Jersey
MLK Jr. Federal Building & Courthouse
50 Walnut Street, Room 2064
Newark, New Jersey 07102

**Re: *NJ Dept. of Envir. Protection, et al. v. E.I. DuPont De Nemours and Co.,
et al.***

Civil Action No.: 2:19-cv-14758-JMV-SCM

Civil Action No.: 1:19-cv-14766-RMB-JS

Civil Action No.: 3:19-cv-14767-MAS-ZNQ

Civil Action No.: 1:19-cv-14765-NHL-JS

Dear Judge Clark,

Dear Magistrate Judge Clark,

On July 9, we sent the Court a pre-conference letter with an attachment setting forth the status of discovery. Certain revisions were required to make it accurate. A revised version is attached.

We thank the Court for its consideration in this matter.

Respectfully,

COHN LIFLAND PEARLMAN
HERRMANN & KNOPF LLP
Special Counsel to the Attorney General

By: /s/Leonard Z. Kaufmann
Leonard Z. Kaufmann
A Member of the firm

cc: All Counsel of Record (*W/Encl. via ECF*)

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PRE-CONFERENCE LETTER

REVISED on JULY 12, 2021

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Status of Parties' Agreements to Exchange Certain Information

- The parties agreed to provide custodial and non-custodial sources of potentially responsive discovery by May 7, 2021.
 - Historic DuPont/Chemours/Chemours FC identified 5 sources of potentially responsive information on May 7, 2021. On June 10, 2021, Historic DuPont/Chemours/Chemours FC produced to Plaintiffs all of the data related to the 4 subject sites located in one of the sources of potentially responsive information identified in their May 7, 2021 letter (the Locus EIM Database totaling 684 MB of data). They then identified 95 specific employee custodians on July 2, 2021 (56 for Chambers Works, 11 for Parlin, 21 for Repauno, and 7 for Pompton Lakes), and will endeavor to identify specific environmental consultants/contractors.
 - 3M identified 54 individual custodians, including relevant job titles of former employees and current job titles of current employees, and 13 non-custodial sources of potentially discoverable information on May 7, 2021.
 - DuPont Specialty Products ("DSP") identified 5 general categories of custodial and non-custodial sources of information on May 7, 2021. It also identified two environmental consultants/contractors for the Parlin site, and one for the Chambers Works site. It did not identify any specific individual custodians at that time. DSP states that it will identify potential non-custodial sources, if any the week of July 12.
 - Regarding Plaintiffs' ISRA claims:
 - Historic DuPont identified 5 general categories of custodial and non-custodial sources of information on May 7, 2021. It also identified two environmental consultants/contractors for the Parlin site, and one for the Chambers Works site. It did not identify any specific individual custodians at that time. It states will identify specific custodians the week of July 12.
 - Corteva/New DuPont did not identify any specific custodial or non-custodial sources of information on May 7, 2021. They state they will identify potential non-custodial sources, if any, the week of July 12.
 - Regarding Plaintiffs' fraudulent transfer claims:
 - Historic DuPont/Corteva/New DuPont identified 11 individual custodians and 3 non-custodial sources of information on May 7, 2021.
 - Chemours/Chemours FC identified 10 individual custodians and proposed producing certain transactional and conveyance documents on May 7, 2021.
 - Plaintiffs
 - Plaintiffs identified 7 categories of data sources, including the specific databases NJEMS, COMPASS, HAZSITES, SDWIS, and FACITS, and identified 36 individual custodians for Chambers Works, 19 individual custodians for Parlin, 43 individual custodians for Pompton Lakes, and 11 individual custodians for Repauno on May 7, 2021. Additionally, pursuant to 3M's request, Plaintiffs'

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supplemented that information by including the job titles of those custodians that are active employees of NJDEP on June 18, 2021.

- Historic DuPont/Chemours/ Chemours FC and 3M agreed to provide their positions on reproduction and/or use of prior PFAS-related litigation discovery by May 17, 2021.
 - **AS TO HISTORIC DUPONT/CHEMOURS/CHEMOURS FC, THIS IS AN ISSUE IN DISPUTE.**
 - Historic DuPont/Chemours/Chemours FC provided their positions on May 20, 2021 and July 7, 2021 regarding the reproduction and/or use of discovery materials from previous cases. Specifically, they objected to Plaintiffs' general, catch-all requests in its discovery demands for the reproduction of all discovery materials from certain previous cases, on the grounds that such requests by Plaintiffs were unduly burdensome, not proportional to the needs of the cases, and would have the practical effect of significantly increasing the number of discovery demands that Plaintiffs were otherwise reasonably entitled to. Historic DuPont/Chemours/Chemours FC also believe the aforesaid requests seek documents and/or information outside the scope of this litigation. In an effort to compromise with Plaintiffs and avoid the unnecessary burden and cost on both the parties and fact witnesses, Historic DuPont/Chemours/Chemours FC presented a proposal to Plaintiffs on July 7, 2021 regarding the use of discovery materials from previous cases in the current actions and are awaiting Plaintiffs' response.
 - 3M provided its position on May 17, 2021. 3M has agreed to reproduce in the present actions several production sets/categories of produced documents from the AFFF MDL, as well as deposition transcripts and exhibits of its lay witnesses from several prior PFAS-related litigations and the AFFF MDL. On June 18, 2021, 3M agreed to apply the search terms it proposed. 3M anticipates beginning production of these materials this month. Plaintiffs are continuing to evaluate 3M's position and will be responding by letter anticipated by July 16, 2021.
- The parties agreed to provide proposed search terms for review of their own sources by June 18, 2021.
 - Historic DuPont/Chemours/Chemours FC proposed 607 initial search terms related to the 4 subject sites on July 2, 2021 (260 for Chambers Works, 117 for Parlin, 155 for Repauno, and 75 for Pompton Lakes), and are awaiting Plaintiffs' response.
 - 3M provided search terms on June 18, 2021 to apply to the individual document custodians that 3M identified on May 7, 2021. 3M has begun reviewing materials returned by application of these search terms for responsive information. 3M will separately provide methods to search the non-custodial sources that 3M identified on May 7, 2021.
 - DSP has not provided search terms, but states it will do so the week of July 12, 2021.
 - Regarding Plaintiffs' ISRA claims, Defendants have not provided search terms, but state they will do so the week of July 12, 2021.
 - Regarding Plaintiffs' fraudulent transfer claims, Historic DuPont, New DuPont, and Corteva provided search terms on July 1, 2021. Chemours provided search terms on July 2, 2021.

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- Plaintiffs provided search terms on June 18, 2021.
- The parties are evaluating the search terms that have been exchanged and anticipate further meet-and-confer on this topic.

Status of Discovery by Party

- **Historic DuPont/Chemours/Chemours FC**

- Plaintiffs served the following sets of discovery on Historic DuPont/Chemours/Chemours FC on October 13, 2020:
 - Plaintiffs' First Set of Consolidated RFPs and Interrogatories to Historic DuPont/Chemours/Chemours FC
 - Plaintiffs' First Set of RFPs and Interrogatories to Historic DuPont/Chemours/Chemours FC Regarding Chambers Works
 - Plaintiffs' First Set of RFPs and Interrogatories to Historic DuPont/Chemours/Chemours FC Regarding Parlin
 - Plaintiffs' First Set of RFPs and Interrogatories to Historic DuPont/Chemours/Chemours FC Regarding Pompton Lakes
 - Plaintiffs' First Set of RFPs and Interrogatories to Historic DuPont/Chemours/Chemours FC Regarding Repauno

Historic DuPont/Chemours/Chemours FC served their responses and objections to the above-referenced discovery on January 13, 2021.

- After propounding the above-discovery requests, Plaintiffs specifically requested that Historic DuPont/Chemours/Chemours FC produce the data on the Locus EIM database related to the 4 subject sites on March 25, 2021. The parties met-and-conferred on this issue, and Historic DuPont/Chemours/Chemours FC produced the entire Locus EIM database related to the 4 sites on June 10, 2021. Plaintiffs are currently reviewing the contents of the database.
- Plaintiffs sent Historic DuPont/Chemours/Chemours FC letters concerning deficiencies with their responses to Plaintiffs' Consolidated, Chambers Works, and Parlin discovery requests on May 6, 2021. **THIS IS A DISPUTED ISSUE.**

- **3M**

- Plaintiffs served their First Set of Consolidated RFPs and Interrogatories on 3M on October 13, 2020. 3M served its responses and objections on January 13, 2021, per agreement of the parties. Also on January 13, 3M made an initial production of documents comprised of records of 3M's sales and shipments of certain PFAS chemicals or products to Historic Dupont's Chambers Works or Parlin facilities, Material Safety Data Sheets for products reflected in those sales records, as well as materials that 3M submitted to the U.S. EPA's Administrative Record No. 226 regarding PFAS chemicals. These same materials were previously made available to NJDEP in the course of 3M's responses to the Department's 2019 Statewide PFAS Directive.

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- The parties have been meeting-and-conferring, focusing those discussions on PFOA/PFOS products 3M sold for use by Historic DuPont at Chambers Works and/or Parlin and those products that Plaintiffs allege and will identify that were allegedly transferred by Historic DuPont to those sites for disposal. The parties initially met-and-conferred on May 12, 2021, after which Plaintiffs clarified and/or narrowed certain RFPs and Interrogatories on this topic. 3M provided further information by letter on June 11, 2021. The parties also held another meet-and-confer on that date. Plaintiffs are reviewing 3M's most recent letter and will be responding with their own letter anticipated by July 16, 2021. Plaintiffs and 3M do not believe there are any issues that require the Court's intervention at this time.
- **DSP**
 - Plaintiffs served their First Set of RFPs and Interrogatories to DSP Regarding Parlin on October 13, 2021. DSP responded to the RFPs Regarding Parlin together with Historic DuPont/Chemours/Chemours FC on January 13, 2021. DSP served its responses and objections to the Interrogatories Regarding Parlin on January 25, 2021.
 - Plaintiffs served their First Set of RFPs and Interrogatories to DSP Regarding Chambers Works on November 23, 2020. DSP served its responses and objections to the RFPs and Interrogatories Regarding Chambers Works on March 5, 2021.
 - The parties have been meeting-and-conferring. The parties initially met on May 21, 2021, after which Plaintiffs asked DSP to provide information related to three threshold issues. DSP provided a response on June 29, 2021, which Plaintiffs are currently evaluating.
- **ISRA Claims**
 - Plaintiffs included RFPs related to their ISRA claims in their First Set of RFPs to Historic DuPont Regarding Chambers Works and their First Set of RFPs to Historic DuPont Regarding Parlin, served on October 13, 2021. As recited above, Historic DuPont provided its responses and objections to those requests on January 13, 2021. Plaintiffs' deficiency letters served May 21, 2021 raised issues with Historic DuPont's responses to requests related to the ISRA claims.
 - Plaintiffs have requested that Defendants participate in a meet-and-confer on the ISRA claims. Defendants state they will endeavor to send Plaintiffs a letter on their responses and objections to the requests by mid-July.
- **Fraudulent Transfer Claims**
 - Plaintiffs included RFPs and Interrogatories related to fraudulent transfer claims in their First Sets of Consolidated RFPs and Interrogatories to Historic DuPont, Chemours, and Chemours FC, served on October 13, 2020. Historic DuPont and Chemours/Chemours FC provided separate responses and objections to these requests and interrogatories on January 13, 2021.
 - Plaintiffs served the following sets of fraudulent transfer-related discovery on Historic DuPont, New DuPont, and Corteva on November 23, 2020:
 - Plaintiffs' Second Set of Consolidated RFPs and Interrogatories to Historic DuPont

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- Plaintiffs' First Set of Consolidated RFPs and Interrogatories to Corteva and New DuPont

Defendants served their responses and objections to the above-referenced discovery on March 5, 2021.

- The parties are meeting and conferring regarding Defendants' objections and responses. The parties held meet and confers on June 15 and 18, 2021. Defendants stated that they would consider amending their respective responses to Plaintiffs' interrogatories to provide additional information.
- In a letter dated June 28, 2021, Plaintiffs identified a number of other outstanding discovery disputes relating to Defendants' objections to Plaintiffs' discovery requests that were not resolved on the meet and confers. Defendants have not yet responded to Plaintiffs' June 28 letter or provided their position with respect to any of the unresolved issues discussed during the June 15 and 18, 2021 meet and confers.

- **Plaintiffs**

- Defendants served the following discovery on Plaintiffs on October 13, October 16, and November 23, 2020.

- **3M**

- 3M's First Set of Interrogatories and RFPs, served October 13 and 16, 2020, respectively.

- **Historic DuPont/Chemours/Chemours FC and DSP**

- Historic DuPont/Chemours/Chemours FC's First Set of Interrogatories, served October 13, 2020
 - Historic DuPont/Chemours/Chemours FC and DSP's First Set of RFPs, served October 13, 2021

- **Fraudulent Transfer Claims**

- Historic DuPont/Corteva/New DuPont's First Set of Interrogatories and RFPs, served November 23, 2020

- Plaintiffs served their responses and objections to Defendants' discovery on January 13 and March 5, 2021.
- Plaintiffs in their January 13, 2021 response also directed Defendants to responsive information available on NJDEP Data Miner, NJ-GeoWeb, and asked Defendants to contact Plaintiffs' counsel to coordinate the time and manner of Defendants' review of hardcopy documents. Plaintiffs also electronically produced the following documents in response to Defendants' requests:

- Excerpts of the NJEMS Database pertaining to the Sites.
 - Excerpts of the Hazsites Database pertaining to the Sites.

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- Proposed and adopted rules, maximum contaminant level recommendations, studies, and publications concerning NJDEP's review of the risks to human health posed by certain PFAS.
 - Preliminary guidance for PFOA in drinking water and fish consumption advisories for PFAS.
 - Documents relating to the General Information Notice posted for the Parlin site by DuPont Specialty Products on or about May 30, 2019, and the Remediation Funding Source Self Guarantee and Remediation Cost review and RFS/RA Form posted for the Parlin site by DuPont Specialty Products on or about June 28, 2019.
 - Documents relating to the Administrative Consent Orders for each of the Chambers Works, Parlin, Pompton Lakes, and Repauno sites entered on or about February 2015 and any amendments to those Administrative Consent Orders.
 - Documents supporting the contention that the conveyance of the Parlin Site to DuPont Specialty Products by deed recorded on January 29, 2019, triggered ISRA compliance.
 - Documents supporting the contention that the January 29, 2019 transfer of the leasehold to certain portions of the Chambers Works site triggered ISRA compliance.
 - Documents supporting the contention that DuPont's execution of the Chemours Separation Agreement triggered ISRA compliance.
 - Documents regarding DuPont's transfer, by special warranty deed dated January 23, 2015, of the ownership of Chambers Works to Chemours FC that triggered ISRA compliance.
 - Documents regarding ISRA's applicability to DuPont's intended spin-off of and transfer of land and other assets, including portions of the Chambers Works and/or Parlin sites, to Chemours.
- Defendants' review of Plaintiffs' electronic production to date is ongoing.
 - 3M and Plaintiffs have been working cooperatively to arrange for a vendor to scan the hardcopy site file documents and make copies of any enclosed media for the Chambers Works and Parlin facilities that is housed at NJDEP's offices. It is anticipated that the scanning of these documents will commence within 2-3 weeks. To the extent Plaintiffs have an index or indexes of the hardcopy documents being made available, 3M has requested a copy of the same in advance of the scanning.
 - 3M has also requested that Plaintiffs identify the specific natural resources which they claim have been injured or damaged for the Chambers Works and Parlin actions, without prejudice to any position the Plaintiffs or other parties (including their respective experts) may wish to take in the litigations. From 3M's perspective, while the NJEMS and Hazsites databases that Plaintiffs have produced reference data and/or the

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collection of data, they do not provide access to any reports and, equally if not more importantly, do not identify the natural resources, if any, that were sampled, what were the samples analyzed for and the natural resources at issue in the litigations. On July 7, 2021, 3M separately requested expedited production of copies of a handful of documents which were identified in 3M's review of DataMiner.

- Historic DuPont/Chemours/Chemours FC have also requested that Plaintiffs identify and provide additional details regarding the natural resources purportedly injured and/or damaged from claimed releases at the 4 sites. Historic DuPont/Chemours/Chemours FC believe this information will assist in expediting the discovery process and in further clarifying Plaintiffs' claims. Historic DuPont/Chemours/Chemours FC are awaiting Plaintiffs' response.